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# Who Is the Lawyer of the Century

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# WHO IS THE LAWYER OF THE CENTURY?

*Gerald F. Uelman\**

## I. INTRODUCTION

Every lawyer should have a hero. Mine has always been Clarence Darrow. As a high school student, it was reading Darrow's biography by Irving Stone,<sup>1</sup> and reading the closing arguments in his famous trials,<sup>2</sup> that inspired me to pursue a career as a lawyer. I discovered I was not alone. Thousands of other lawyers had found the same inspiration and also looked to Darrow as their hero. For fifteen years I kept a portrait of Darrow hanging over my desk, and I frequently found myself gazing up and asking, "Would Clarence Darrow turn down this case? What would Clarence Darrow have to say about that?" That's what heroes are for: to inspire us and to serve as role models.

Then, in 1993, Professor Geoffrey Cowan published an account of the 1912 Los Angeles trials of Clarence Darrow for jury bribery.<sup>3</sup> The charges were brought in the wake of a case in which two labor organizers, the McNamara brothers, were accused of dynamiting the Los Angeles Times building on October 1, 1910. Police detectives

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\* Professor of Law, Santa Clara University School of Law. Professor Uelman was co-counsel for the defense in two "trials of the century": the "Pentagon Papers" trial of Daniel Ellsberg, and the trial of O.J. Simpson. He would like to acknowledge the inspiration and insight provided by Yale Kamisar, the Clarence Darrow Professor of Law at the University of Michigan School of Law, and Donald Fiedler, the Omaha, Nebraska actor and lawyer who has portrayed Clarence Darrow over one-hundred times, and who portrayed William Jennings Bryan in the one-man play authored by Professor Uelman. Sam Kiamanesh, Santa Clara Law School class of 2000, assisted in the research for this article.

1. IRVING STONE, CLARENCE DARROW FOR THE DEFENSE (1941).

2. The best collection of arguments from Darrow's famous trials is still ATTORNEY FOR THE DAMNED (Arthur Weinberg ed., 1957).

3. GEOFFREY COWAN, THE PEOPLE V. CLARENCE DARROW: THE BRIBERY TRIAL OF AMERICA'S GREATEST LAWYER (1993).

observed Darrow's chief investigator, Bert Franklin, delivering a \$500 down payment to a juror at a busy Los Angeles intersection, although negotiations were under way to have the McNamara brothers change their plea to guilty. One of the detectives who arrested Franklin later testified that immediately after the money was delivered to the juror, Darrow himself came running up and exclaimed, "They're on to us, Bert."

Although Darrow was never convicted of jury bribery,<sup>4</sup> Professor Cowan presents convincing evidence that he was, in fact, guilty as charged. In a review of Professor Cowan's book, Professor Alan M. Dershowitz<sup>5</sup> concluded that "the convincing evidence that he bribed jurors in the McNamara case forever disqualifies Darrow from being a role model for lawyers."<sup>6</sup> Proclaiming that there is never any justification possible for corrupting the legal system, Dershowitz pronounced final judgment on Darrow: "He does not deserve the mantle of honor he has proudly borne over most of this century."<sup>7</sup> I briefly contemplated removing the portrait hanging over my desk and looking for another hero.

The purpose of this Essay is to identify the defense lawyers who may have a legitimate claim to the mantle of honor as the "lawyer of the century," and assess those claims next to the claim of Clarence Darrow. Should Darrow continue to serve as a role model for the lawyers of the next century? I conclude that despite the evidence that he may have been guilty of jury bribery, Clarence Darrow fully redeemed himself in his subsequent quarter-century as a trial lawyer, and continues to inspire countless lawyers to pursue the highest ideals of the legal profession. He deserves to be recognized as the

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4. Two separate trials resulted in an acquittal and a hung jury. In the first trial, which resulted in an acquittal, Earl Rogers, the legendary Los Angeles defense lawyer, represented Darrow. Joseph Ford, who later served as the first dean of Loyola Law School in Los Angeles, headed the prosecution. See Gerald F. Uelman, *The Lawyer Who Saved Clarence Darrow*, CRIMINAL DEFENSE, May-June 1983, at 28. Darrow represented himself at the second trial, in which the jury hung eight to four for conviction.

5. Professor Dershowitz is himself a contender for honors as "defense lawyer of the century." See *infra* at Parts III, IV, VI, VII, & VIII.

6. Alan M. Dershowitz, *Tipping the Scales of Justice*, WASHINGTON POST, May 16, 1993, at X1 (reviewing COWAN, *supra* note 3).

7. *Id.*

twentieth-century lawyer who, more than any other, should serve as a role model of what lawyers should strive to become.

## II. THE CRITERIA

I believe that five criteria are relevant to determine who should be recognized as the lawyer of the century: (1) professional reputation; (2) participation in high-profile trials, especially those ranked as "trials of the century"; (3) public recognition; (4) current accessibility of information about the individual's career and accomplishments; and (5) adherence to ethical standards.

The criterion of professional reputation assesses the lawyer's standing among fellow lawyers. Lawyers are likely to be most familiar with the quality of a defense lawyer's work, and in a better position to judge that quality. This criterion relates to the lawyer's suitability as a role model for other lawyers. Unlike public recognition, which measures a lawyer's media "fame," the criterion of professional reputation measures the level of respect a lawyer has achieved among those who share the same values. Professional reputation also relates to accessibility, but accessibility to the legal profession rather than the public at large.

The criterion of participation in high-profile trials requires that we limit our candidates to those lawyers whose performances were tested in the demanding arena of close public scrutiny. Many outstanding trial lawyers concluded successful careers without ever appearing in a high-profile case. The lawyer of the century, however, should be a lawyer who is remembered for his or her battles. Lawyers are commonly identified by reference to the cases in which they appeared. This requirement will exclude many eminent trial lawyers who practiced primarily in the civil arena. Lawyers like Louis Nizer and Morris Dees would certainly rank high on a list of great American trial lawyers, but the trials of the century have, with few exceptions, been criminal trials. To some extent, this simply reflects the prurient interest of the media. The grisly details of maiming and murder, and the drama of an individual on trial for his or her life or liberty, have always attracted more public attention than suits for damages.

This criterion will also exclude some truly great trial lawyers whose practice was confined to one local region. Moman Pruiett, for

example, probably compiled the most impressive record of success in death penalty cases of any lawyer in America. From 1900 to 1935, he defended 343 persons accused of murder. Three-hundred four of them were acquitted—not one was executed.<sup>8</sup> But with rare exceptions, Pruiett tried all his cases in the Indian Territory which became Oklahoma.

My list also excludes prosecutors. Hopefully, someone will attempt to identify the “prosecutor of the century.” Lawyers like Thomas E. Dewey and Vincent Bugliosi have not gone unrecognized, but extolling the virtues of great prosecutors is beyond the scope of this undertaking, and a task best left to a lifelong prosecutor.<sup>9</sup>

The criterion of public recognition means that the lawyer of the century must be a name that is already familiar to the public. Just as public familiarity helps define the trials of the century, it can help define the lawyer of the century. But participation in a “trial of the century” by itself does not guarantee public recognition that lasts. Who ever heard of Delphin Delmas?<sup>10</sup> Who ever heard of Edward J. Reilly and C. Lloyd Fisher?<sup>11</sup>

Some defense lawyers, of course, actively seek fame and celebrity. Selecting the lawyer of the century, however, should not be reduced to a process of identifying the “most famous” lawyer of the century. We should inquire into how the lawyer achieved public

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8. See Gerald F. Uelmen, *Moman Pruiett, Criminal Lawyer*, CRIMINAL DEFENSE, May-June 1982, at 35. See also Pruiett's autobiography, *MOMAN PRUIETT, CRIMINAL LAWYER* (1944).

9. I have noted elsewhere that prosecutors in trials of the century usually fare better with the public than do defense lawyers. For prosecutors, performance in a trial of the century is often a prelude to political office or judicial appointment. See GERALD F. UELMEN, LESSONS FROM THE TRIAL: THE PEOPLE V. O.J. SIMPSON 206-07 (1996).

10. Delmas was the California lawyer who represented Harry Thaw in his first trial for the murder of New York architect Stanford White. Delmas, with nineteen acquittals in nineteen murder cases, was known as “The Napoleon of the Pacific Bar.” He was a graduate of Santa Clara University. See GERALD LANGFORD, *THE MURDER OF STANFORD WHITE* (1962).

11. Reilly and Fisher were lead trial counsel for Bruno Richard Hauptmann, convicted and executed for the kidnap-murder of Charles Lindbergh, Jr. See SIDNEY B. WHIPPLE, *THE TRIAL OF BRUNO RICHARD HAUPTMANN* 390-541 (1937).

fame. Was it by virtue of his or her appearance in a long succession of highly publicized cases? Was it by self-promotion and self-aggrandizement in boastful books and frequent appearances as a television "commentator"? Was it by participation in public controversies outside of the courtroom?

The criterion of current accessibility is closely related to public recognition, but it gives special attention to the ready availability of information about a lawyer's career and achievements. The lawyer of the century should be an individual whose accomplishments are celebrated, who can serve as a continuing source of inspiration and enlightenment. A lawyer's fame may be short-lived if it is not preserved in our libraries or enshrined in our theatres.

The criterion of adherence to ethical standards is the most difficult to assess, for two reasons. First, the ethical standards to be applied must be the standards of the criminal defense bar. The public tends to associate lawyers with the clients they represent, and the greatest defense lawyers may be those who take on the most unsavory clients. Secondly, the ethical standards of the criminal defense bar have undergone a remarkable change in the course of the past century. We cannot apply contemporary standards in judging lawyers who practiced a century ago. On the other hand, personal honesty, courage, loyalty to clients and respect for their confidences, and independence are timeless values that will always define greatness in lawyers.

### III. PROFESSIONAL REPUTATION

To assess professional reputation, three surveys were conducted, in which respondents were asked to list five lawyers, living or dead, who the respondent considered to be "the greatest criminal defense lawyers of the twentieth century." Twenty-five responses were obtained from lawyers attending the annual Bryan Scheckmeister Death Penalty College at Santa Clara University in August 1999,<sup>12</sup>

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12. The Bryan Scheckmeister Death Penalty College is conducted each summer on the campus of Santa Clara University to train defense attorneys with pending pre-trial capital cases in the skills required to adequately represent defendants charged with capital crimes. The College is directed by Professor Ellen Krietzberg, Professor of Law, Santa Clara University School of Law.

twenty-two responses were obtained from lawyers attending the annual convention of Arizona Attorneys for Criminal Justice in September 1999, and twenty-five responses were obtained from law students enrolled in classes taught by the author at Santa Clara University School of Law in August 1999.

The death penalty lawyers ranked their top ten choices as follows:

1. Clarence Darrow (19)
2. Thurgood Marshall (10)
3. Steve Bright (7)
4. Gerry Spence (6)
5. Millard Farmer (5)
6. Michael Tigar (5)
7. Johnnie Cochran (4)
8. Earl Rogers (3)
9. Edward Bennett Williams (3)
10. William Kunstler (3)

The Arizona criminal defense lawyers ranked their picks as follows:

1. Clarence Darrow (19)
2. Gerry Spence (17)
3. William Kunstler (10)
4. Thurgood Marshall (9)
5. F. Lee Bailey (7)
6. Edward Bennett Williams (7)
7. Michael Tigar (5)
8. Alan Dershowitz (4)
9. Leslie Abramson (3)
10. Johnnie Cochran (3)

The law students ranked their top ten choices as follows:

1. Clarence Darrow (13)
2. Johnnie Cochran (10)
3. F. Lee Bailey (9)
4. Alan Dershowitz (8)
5. Gerry Spence (5)
6. Thurgood Marshall (3)

7. Barry Scheck (3)
8. William Kunstler (2)
9. Leslie Abramson (2)
10. Melvin Belli (1)

While Darrow topped the list in all three surveys, four other lawyers appeared on all three lists: Johnnie Cochran, William Kunstler, Thurgood Marshall, and Gerry Spence. Five more lawyers appeared on two of the lists: Leslie Abramson, F. Lee Bailey, Alan Dershowitz, Michael Tigar, and Edward Bennett Williams.

The criterion of professional reputation should be our starting point, and this criterion yields a list of ten lawyers who could be called contenders for the honor of lawyer of the century. It is the same list I would compile without the benefit of surveys. I have been an avid student of famous trials and legendary lawyers for many years, and have my own collection of transcripts, biographies, and trial accounts which occupy a sizable proportion of my leisure reading. In teaching courses in Criminal Law, Criminal Procedure, Evidence, and Trial Advocacy, I have gained some familiarity with the work of many of these lawyers. I have also had the opportunity both to meet many of these lawyers through active membership in California Attorneys for Criminal Justice and the National Association of Criminal Defense Lawyers, and to work directly with some of them in my own limited forays into the world of criminal defense practice. The ten lawyers we should consider contenders, ranked in the order of the composite results of the three surveys, are:

1. Clarence Darrow (51)
2. Gerry Spence (28)
3. Thurgood Marshall (22)
4. Johnnie Cochran (17)
5. F. Lee Bailey (16)
6. William Kunstler (15)
7. Alan Dershowitz (12)
8. Michael Tigar (10)
9. Edward Bennett Williams (10)
10. Leslie Abramson (5)



## IV. PARTICIPATION IN HIGH-PROFILE TRIALS

Appendix I to this Essay lists thirty-seven cases that have gained so much public attention they were all called, at one time or another, trials of the century. Each of the contenders on our list has participated in at least one of these trials, with the sole exceptions of Thurgood Marshall and Gerry Spence.

Thurgood Marshall is principally remembered for his work in the landmark school desegregation cases, and his tenure as the first black Justice on the United States Supreme Court. Often overlooked, however, is the fact that he represented dozens of criminal defendants in trials and appeals in courtrooms all across the United States. None, however, was a trial of the century. Most were capital cases in which the defendants were black and penniless.<sup>13</sup> No one on our list of contenders argued more cases before the United States Supreme Court. As Director and Chief Counsel for the NAACP Legal Defense and Education Fund, Thurgood Marshall argued a total of thirty-two cases before the highest Court, and won twenty-nine of them.<sup>14</sup> He argued many more as Solicitor General. While *Brown v. Board of Education*<sup>15</sup> has a strong claim to being the "case of the century" to emerge from the United States Supreme Court, it was not a trial that captured national attention. The strategic planning and appellate strategy that preceded the landmark decision are admirably presented in *Simple Justice*,<sup>16</sup> which describes the key role Thurgood Marshall played in achieving a successful result.

Gerry Spence served as lead counsel in many high-profile trials, including the Karen Silkwood case, the trial of Randy Weaver for the Ruby Ridge F.B.I. stand-off, and the criminal trial of Imelda Marcos, but much of his public acclaim is attributable to his high visibility as an author and legal commentator. He also devotes considerable

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13. See Gerald F. Uelman, *Justice Thurgood Marshall and the Death Penalty: A Former Criminal Defense Lawyer on the Supreme Court*, 26 ARIZ. ST. L.J. 403 (1994).

14. See 4 THE JUSTICES OF THE UNITED STATES SUPREME COURT 1789-1969, at 3069 (Leon Friedman & Fred L. Israel eds., 1969) [hereinafter JUSTICES].

15. 347 U.S. 483 (1954).

16. RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY* (Vintage Books 1977).

energy to inspiring and training trial lawyers in the skills he has mastered. His high standing in terms of professional reputation suggests that his message resonates among today's lawyers, and that message is remarkably similar to the message conveyed by Clarence Darrow: that lawyers must take up the cause of the underdogs in modern society.

Three of the contenders appeared in a single trial on the list: Abramson (Menendez), Cochran (O.J. Simpson), and Williams (Hoffa). Four of the contenders appeared in two trial-of-the-century cases: Bailey in the Patty Hearst and O.J. Simpson cases, Dershowitz in the same two cases, Kunstler in the Chicago Seven trial and as appellate counsel for Jack Ruby, and Tigar in the Chicago Seven and Oklahoma bombing trials. However, in terms of the sheer number of trials of the century in which he participated, no one comes close to Clarence Darrow. He defended Bill Haywood in 1907, the McNamara brothers in 1911, Loeb and Leopold in 1924, and Thomas Scopes in 1925.

In early 1999, NBC's *Today Show* conducted a public survey to determine which of the twentieth century's high-profile trials should be labeled the trial of the century. The *Today Show* received nearly 4000 responses, and the results demonstrated much more public familiarity with recent televised trials than with the historical cases that occurred earlier in the century. The top five choices for trial of the century, with the percentage of votes earned, were as follows:<sup>17</sup>

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|-------------------------|-----|
| 1. O.J. Simpson         | 24% |
| 2. Nuremberg War Crimes | 21% |
| 3. Clinton Impeachment  | 20% |
| 4. Scopes Evolution     | 14% |
| 5. Lindbergh Kidnapping | 7%  |

The high ranking given to the Clinton Impeachment "trial" can only be attributed to the fact that the trial was going on while the survey was being conducted. It can only loosely be called a trial, and will surely fade in public memory as quickly as last winter's snow.

The fact that a trial in which a lawyer advocated is picked as *the* trial of the century should not, of course, make that lawyer the

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17. The survey results can be found on the Internet at [http://www.law.umkc.edu/faculty/projects/FTrials/Today survey.html](http://www.law.umkc.edu/faculty/projects/FTrials/Today%20survey.html).

lawyer of the century. But, the fact that the O.J. Simpson trial is the popular choice for trial of the century means that the claims of "dream team" members F. Lee Bailey, Johnnie Cochran, and Alan Dershowitz must be carefully weighed against that of Darrow.

Despite the Simpson trial's status as the popular choice, there is a compelling argument to be made that the high-profile trials in which Clarence Darrow participated have stronger claims to the label of trial of the century. Professor Douglas Linder makes a persuasive argument that the true trial of the century was the Scopes trial because of its enduring visibility, its "superstar" participants on both sides, the brilliant display of cross-examination skills during the testimony of William Jennings Bryan, its subsequent dramatization, and the important competing ideas that the trial implicated.<sup>18</sup> While the Scopes trial occurred in an era preceding the mass media saturation made possible by modern television, the newspaper coverage was intense, and it was the first trial ever broadcast by live radio from the courtroom. The trial's portrayal on Broadway and in the popular film *Inherit the Wind*, although grossly inaccurate, imprinted an indelible image of Darrow on the American consciousness.<sup>19</sup>

One could plausibly argue, however, that the O.J. Simpson trial captured a wider audience, showcased its own galaxy of superstars, featured some brilliant cross-examination and oratorical splendor, and inspired a glut of books unmatched by any other trial on the list. Where the Simpson trial falls short is on whether anything important was at issue, other than the liberty of a celebrity. The racial issues were confronted only in a muted and tangential fashion. The Scopes trial, on the other hand, featured a pitched battle between science and religion, between the Biblical story of creation and the Darwinian theory of evolution. The issue was far from settled by the Scopes trial, but the trial served to define the issues for a debate that continues to this day.<sup>20</sup> Further, books are still written today regarding the

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18. See *id.* Professor Linder, who has compiled a valuable Web page on famous trials, offers his assessment of "What is the trial of the century?" on the Internet. *Id.*

19. See Gerald F. Uelman, *The Trial as a Circus: Inherit the Wind*, 30 U.S.F. L. REV. 1221 (1996).

20. See Edward J. Larson, *The Scopes Trial and the Evolving Concept of Freedom*, 85 VA. L. REV. 503 (1999).

impact of the Scopes trial nearly seventy-five years after its conclusion.<sup>21</sup>

Apart from the Scopes trial, however, the other trials of the century in which Darrow participated also involved highly important issues, and are still the subject of considerable study and scrutiny. For example, the 1907 trial of Bill Haywood was a "showdown" between the forces of organized labor and capital that was closely followed throughout the nation. The victim was a former governor of Idaho, and the defendant was one of the most colorful characters in American history. The saga was recently recounted in an outstanding narrative by the late J. Anthony Lukas, a Pulitzer Prize winning author.<sup>22</sup> The McNamara trial arose from what was widely labeled the "crime of the century," the detonation of a bomb that destroyed the Los Angeles Times building and killed twenty workers. As noted in the Introduction of this Essay, Professor Geoffrey Cowan recounted the events of the McNamara case and the subsequent trials of Darrow for bribing jurors in a critically acclaimed book published in 1993.<sup>23</sup> The Loeb and Leopold case was the subject of an excellent contemporary account,<sup>24</sup> as well as a novel which was made into a film starring Orson Welles as Darrow.<sup>25</sup> Darrow's classic plea against capital punishment in that case is widely available.

One might argue that the performance of the O.J. Simpson defenders demonstrated trial skills superior to those demonstrated by Darrow in his trials of the century. While Darrow won an outright acquittal for Haywood, he entered pleas of guilty for the McNamaras and for Loeb and Leopold, and lost the Scopes verdict. But winning

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21. See, e.g., EDWARD J. LARSON, *SUMMER FOR THE GODS: THE SCOPES TRIAL AND AMERICA'S CONTINUING DEBATE OVER SCIENCE AND RELIGION* (1997). Larson's account won the 1997 Pulitzer Prize for History.

22. See J. ANTHONY LUKAS, *BIG TROUBLE* (1997); see also DAVID H. GROVER, *DEBATERS AND DYNAMITERS: THE STORY OF THE HAYWOOD TRIAL* (1964).

23. See COWAN, *supra* note 3.

24. See MAUREEN MCKERNAN, *THE AMAZING CRIME AND TRIAL OF LEOPOLD AND LOEB* (1924).

25. See *COMPULSION* (Darryl F. Zanuck Productions, Inc., 1959). The film is currently available on video from Fox Video, Inc. in their "Studio Classic" series.

or losing cannot be the principal measure of performance in these cases. The guilty pleas in both the McNamara and Loeb and Leopold cases were part of a calculated and successful strategy to avoid the death penalty, and the Scopes conviction was reversed on appeal.

Three other trials have strong claims to recognition as the trial of the century. The Lindbergh kidnapping trial captured enormous public attention, especially since it took more than two years to identify a suspect. Whether justice was achieved has been the subject of ongoing debate ever since. The Nuremberg War Crimes trial was certainly a defining moment of the twentieth century, since it was the first public exposure of the horrors of the Holocaust. The Chicago Seven trial will always stand as a monument to the hypocrisy of American political leadership during the era of the Vietnam War. None of these trials, however, really served as a showcase of lawyerly skills. What distinguishes the trials of the century in which Clarence Darrow participated is that his presence was the most important element that *made* them trials of the century. He led the parade of public attention into the courtrooms where he performed, and his performances usually lived up to their advance billing.

Accordingly, with respect to the level of participation in high-profile trials, especially those labeled "trials of the century," Clarence Darrow's record surpasses that of any other contender for recognition as lawyer of the century. Regardless of what trial is deemed the trial of the century,<sup>26</sup> no lawyer who appeared in American courtrooms during the twentieth century matched the sustained performance of Clarence Darrow in the glare of public scrutiny, spread over a forty-five year period.

## V. PUBLIC RECOGNITION

The databanks for online research provide a simple tool to gauge current "fame." The News Library of Lexis-Nexis, for example, includes full text for major newspapers, including the *New York Times*,

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26. Having participated as counsel in two trials of the century myself, my own pick for *the* trial of century is the 1946 Nuremberg War Crimes trials. The horror of the Holocaust will qualify as the crime of the millennium, not just the twentieth century. The trial that exposed it and seared its images on the consciousness of the world also established a precedent that will reverberate in future centuries.

the *Los Angeles Times*, the *Chicago Tribune*, and the *Washington Post*. Getting your name in the newspaper is certainly one measure of fame, although it does not provide century-wide coverage. As a result, lawyers who made their mark earlier in the twentieth century are not likely to appear in the news with the frequency of lawyers currently engaged in high-profile cases. Thus, this device is more a measure of current notoriety than lasting fame. Nonetheless, it provides some useful comparisons.

In a Lexis-Nexis search conducted July 28, 1999, the number of news stories in which our top ten contenders have appeared in the ALLNWS library breaks down as follows:

1. Thurgood Marshall	25,426
2. Johnnie Cochran	22,516
3. F. Lee Bailey	10,390
4. Alan Dershowitz	10,095
5. William Kunstler	5315
6. Edward Bennett Williams	4500
7. Clarence Darrow	4402
8. Michael Tigar	3933
9. Gerry Spence	3180
10. Leslie Abramson	2439

Two positions on this list are especially remarkable: the position of Johnnie Cochran, and the position of Clarence Darrow. Cochran can confidently be labeled the most famous living lawyer in America today, and his fame (or infamy) can just as confidently be attributed to his role as lead defense counsel in the trial of O.J. Simpson. He has remained in the news since the Simpson trial as host of a nightly television show on Court TV, and as counsel in some newsworthy lawsuits alleging police misconduct in New York and Los Angeles. The position of Clarence Darrow is equally remarkable. The appearance of a man who has been dead for sixty years in the news on a daily basis reflects two things: the continuing popularity of the one-man play based on his life,<sup>27</sup> and his continuing stature as a popular

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27. Nearly half of the news articles mentioning Darrow were reviews of the David W. Rintels play, *Clarence Darrow*, which is still widely performed. A video of Henry Fonda's memorable portrayal of Darrow on Broadway in this play in 1974 recently became commercially available from Kino Video, <<http://www.kino.com>>.

icon. One recent news article was a mock interview of Clarence Darrow as to how he would have handled the O.J. Simpson trial, utilizing quotations from his autobiography.<sup>28</sup>

The positions of Gerry Spence and Leslie Abramson at the bottom of this list may also seem surprising, since they are among the most recognizable lawyers in America. The explanation, of course, is that both achieved that recognizability as television commentators. The frequency of their television appearances is not reflected in the Lexis-Nexis database.

Some might suggest that self-generated publicity should reduce a lawyer's stature, rather than raise it; that self-promotion is "unseemly" or "unprofessional." While some of the contenders on our list might be deemed more aggressive than others in this regard, all of them have engaged in unabashed self-promotion, and all of them appear to have relished the spotlight. Clarence Darrow thoroughly enjoyed being the center of controversy, and when he wasn't in the courtroom, he was frequently on the stage, lecturing and debating issues such as capital punishment and evolution. The lawyer of the century *should* be a public figure, with a public persona.

Not all lawyers have the appetite for celebrity. For many excellent attorneys, public recognition may be a hindrance to effective and competent representation of their clients. They prefer to work behind the scenes. Edward Bennett Williams achieved much of his success as a Washington "insider," avoiding media attention unless it could be utilized as a tool on behalf of his clients. Johnnie Cochran, on the other hand, combined his law practice with a television career. The fact remains, however, that both are recognized by the public as great lawyers because of their courtroom performances, and the same can be said of every lawyer on our list of contenders.

With rare exceptions, all of the news stories concerning Thurgood Marshall related to his service as an Associate Justice of the U.S. Supreme Court, rather than his work as a trial lawyer. Four of the contenders on the list are deceased: Darrow, Kunstler, Marshall, and Williams. While Marshall, Kunstler, and Williams surpassed Darrow in frequency of news stories, all three died during the

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28. See David Andrew Lloyd, *Expert Advice from Grave: Clarence Darrow Joins Simpson 'Dream Team'*, THE PLAIN DEALER, May 28, 1995, at 1J.

approximate fifteen-year period covered by the ALLNWS library, and a substantial portion of the news coverage devoted to them was obituaries and stories related to their deaths.<sup>29</sup>

In terms of public recognition, it can certainly be said that all of the names on the list are readily recognizable public figures. While Clarence Darrow currently ranks seventh on this list, the list is only a measure of current public recognition at the close of the century. The enduring nature of Darrow's celebrity is unique. The fame of others has yet to meet the test of time. Darrow has met it and endured.

## VI. CURRENT ACCESSIBILITY OF INFORMATION

The lawyer of the century should be one whose life is an open book, to be read by future generations seeking inspiration and enlightenment. In our modern world, a movie or a Web page may make the lawyer even more accessible than a library book. To what extent is information readily available in the media about the contenders on our list? Every lawyer on the list, with the regrettable exception of Michael Tigar, is the subject of a readily accessible biography or autobiography. Many of them also authored books brimming with advice for other lawyers or commenting on current social issues.

Leslie Abramson's autobiography, co-authored with Richard Flaste, was published in 1997.<sup>30</sup> It is a candid and lively account of her life and path-breaking career, including a colorful account of her years as a Deputy Public Defender in Los Angeles. There is very little about which she does not have a strong opinion, and her account of the Menendez trials is a heavy dose of the blistering advocacy that characterizes her courtroom performances. As the only female on our list of contenders, Ms. Abramson provides revealing glimpses into how she managed to balance marriage and motherhood with a fast-paced career as a top-ranked trial lawyer.

F. Lee Bailey's career has included too many fascinating cases to pack into one book, so he has authored three for popular

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29. Thurgood Marshall died in 1993, William Kunstler in 1997, and Edward Bennett Williams in 1988.

30. See LESLIE ABRAMSON & RICHARD FLASTE, *THE DEFENSE IS READY: LIFE IN THE TRENCHES OF CRIMINAL LAW* (1997).



audiences. The best was his first, *The Defense Never Rests*.<sup>31</sup> It chronicles his representation of Dr. Sam Shepard, the "Great Plymouth Mail Robbery," the Boston Strangler, and Dr. Carl Cappolino. What is most remarkable is that Bailey handled all of these cases during his first ten years out of law school. His second book, *For the Defense*,<sup>32</sup> focuses principally on his representation of Captain Ernest Medina, the army officer who commanded the troops accused of the My Lai massacre in Vietnam, and his own defense when he was indicted for mail fraud with a former client, Glenn Turner. More recently, Bailey packed his years of accumulated wisdom into a book aimed at law students and young lawyers, entitled *To Be a Trial Lawyer*.<sup>33</sup> The book includes an appendix listing and describing twenty-nine murder cases in which Mr. Bailey was engaged prior to the O.J. Simpson trial, claiming a rate of conviction in those cases of only 4%. Bailey never wrote a book about the Patty Hearst trial, though, an embarrassment he would probably prefer to forget.<sup>34</sup>

Johnnie Cochran's autobiography,<sup>35</sup> published in the wake of the O.J. Simpson trial, is more than an account of the Simpson trial. Cochran describes his efforts on behalf of Geronimo Pratt, his work as a prosecutor, and his extraordinary success in handling civil cases alleging police misconduct. Cochran's three-year run on a nightly television show for Court TV offered trenchant commentary on current legal controversies. The show was cancelled September 30, 1999.

Clarence Darrow authored an autobiography five years before he died,<sup>36</sup> and has been the subject of two excellent biographies since.<sup>37</sup> One of the most popular books about Darrow, however, is a

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31. F. LEE BAILEY & HARVEY ARONSON, *THE DEFENSE NEVER RESTS* (1971).

32. F. LEE BAILEY & JOHN GREENYA, *FOR THE DEFENSE* (1975).

33. F. LEE BAILEY, *TO BE A TRIAL LAWYER* (2d ed. 1994).

34. Patty Hearst, a kidnap victim who allegedly aided her kidnappers in a subsequent crime spree, was convicted and sentenced to prison after a trial in which she repeatedly invoked the Fifth Amendment privilege against self-incrimination during her testimony. The conviction was affirmed in *United States v. Hearst*, 563 F.2d 1331 (9th Cir. 1977).

35. See JOHNNIE L. COCHRAN, JR. & TIM RUTTEN, *JOURNEY TO JUSTICE* (1996). Co-author Tim Rutten is married to Leslie Abramson.

36. See CLARENCE DARROW, *THE STORY OF MY LIFE* (1932).

37. See IRVING STONE, *CLARENCE DARROW FOR THE DEFENSE* (1941);

collection of the arguments he presented in his most famous cases, edited by Arthur Weinberg.<sup>38</sup> A website devoted to Darrow also includes excerpts from his writings and speeches, a comprehensive list of books about his career, and links to related websites.<sup>39</sup> Professor Douglas Linder also maintains *The Clarence Darrow Home Page*.<sup>40</sup> The most rewarding way to encounter Clarence Darrow, however, is by seeing the one-man play about his life, now available on video starring Henry Fonda,<sup>41</sup> or by watching the fictionalized portrayals enacted by Spencer Tracy in *Inherit the Wind*, or by Orson Welles in *Compulsion*. Three of America's most accomplished actors, all now deceased, have left us with memorable portrayals of Clarence Darrow in the courtroom.

Certainly the most prolific author among our contenders is Harvard Law Professor Alan Dershowitz. He writes almost as compulsively as he speaks. Like Bailey, his best book was his first, *The Best Defense*.<sup>42</sup> And the best part of that book is his description of the work he did with F. Lee Bailey in Bailey's defense of the mail fraud charges lodged against him, and in the defense of Patty Hearst. Dershowitz deftly critiques Bailey's performance in the Hearst trial without offering any personal judgment. In *Reversal of Fortune*, Dershowitz describes his brilliant presentation of the appeal on behalf of Claus Von Bulow, a performance that became a popular film with the same title.<sup>43</sup> Jeremy Irons won an Academy Award as best actor for his portrayal of Von Bulow, but the portrayal of Dershowitz by Ron Silver was equally outstanding. Dershowitz played a key role in fashioning the strategy utilized in the defense of O.J. Simpson, and his book *Reasonable Doubts* offers a compelling defense of the verdict.<sup>44</sup> Dershowitz has also authored two popular novels<sup>45</sup> and

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KEVIN TIERNEY, *DARROW: A BIOGRAPHY* (1979).

38. See ATTORNEY FOR THE DAMNED, *supra* note 2.

39. See <<http://ourworld.compuserve.com/homepages/delao/darrow.htm>>.

40. See *supra* note 17.

41. See *supra* note 27.

42. ALAN M. DERSHOWITZ, *THE BEST DEFENSE* (1982).

43. See ALAN M. DERSHOWITZ, *REVERSAL OF FORTUNE* (1986); *REVERSAL OF FORTUNE* (Warner Bros. 1990).

44. See ALAN M. DERSHOWITZ, *REASONABLE DOUBTS* (1996).

45. See ALAN M. DERSHOWITZ, *THE ADVOCATE'S DEVIL* (1994); ALAN M. DERSHOWITZ, *JUST REVENGE* (1999).

a number of provocative commentaries on a wide variety of social issues.<sup>46</sup>

William Kunstler authored or co-authored a total of twelve books,<sup>47</sup> several of which provide valuable commentary on his work as a lawyer. *My Life as a Radical Lawyer*<sup>48</sup> is remarkable for its candor. Kunstler reviews every aspect of his life with honesty and insight. In *The Trial of Leonard Peltier*,<sup>49</sup> Kunstler's seventeen-year effort to free the leader of the American Indian Movement is described. Although key ballistics evidence that discredited the prosecution's theory of the case was withheld, the conviction for murdering an FBI agent was upheld. In *Trials and Tribulations*,<sup>50</sup> Kunstler describes how his participation in the Chicago Seven trial radicalized him. Two excellent accounts of the Chicago Seven trial by other authors also describe the incredible obstacles the lawyers in that case had to overcome to achieve justice for their clients.<sup>51</sup> Kunstler, more than any of our other contenders, resembled Darrow in both

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46. See ALAN M. DERSHOWITZ, ABUSE EXCUSE (1994); ALAN M. DERSHOWITZ, CHUTZPAH (1992); ALAN M. DERSHOWITZ, CONTRARY TO POPULAR OPINION (1994); ALAN M. DERSHOWITZ, TAKING LIBERTIES: A DECADE OF HARD CASES, BAD LAWS, AND BUM RAPS (1989); ALAN M. DERSHOWITZ, SEXUAL MCCARTHYISM: CLINTON, STARR, AND THE EMERGING CONSTITUTIONAL CRISIS (1998); ALAN M. DERSHOWITZ, THE VANISHING AMERICAN JEW (1997).

47. See WILLIAM M. KUNSTLER, AND JUSTICE FOR ALL (1963); WILLIAM M. KUNSTLER, BEYOND A REASONABLE DOUBT (1961); WILLIAM M. KUNSTLER, FIRST DEGREE (1960); WILLIAM M. KUNSTLER, THE HALL-MILLS MURDER CASE: THE MINISTER AND THE CHOIR SINGER (1980); WILLIAM M. KUNSTLER, HINTS & ALLEGATIONS: THE WORLD IN POETRY AND PROSE (1994); WILLIAM M. KUNSTLER, TRIALS AND TRIBULATIONS (1985); WILLIAM M. KUNSTLER AND SHEILA ISENBERG, MY LIFE AS A RADICAL LAWYER (1994); WILLIAM M. KUNSTLER AND SHEILA ALAN ISENBERG, REBEL AT THE BAR: AN AUTOBIOGRAPHY (1994); GARY L. FRANCIONE, ANIMALS, PROPERTY, AND THE LAW (1995) (forward by William M. Kunstler); BRUCE JACKSON, DISORDERLY CONDUCT (1992) (forward by William M. Kunstler); MAURICE KENNY, GREYHOUNDING THIS AMERICA (1988) (forward by William M. Kunstler); JIM MESSERSCHMIDT, THE TRIAL OF LEONARD PELTIER (1983) (forward by William M. Kunstler).

48. See KUNSTLER & ISENBERG, *supra* note 47.

49. See MESSERSCHMIDT, *supra* note 47.

50. See KUNSTLER, *supra* note 47.

51. See JASON EPSTEIN, THE GREAT CONSPIRACY TRIAL (1970); JOHN SCHULTZ, MOTION WILL BE DENIED (1972) (reprinted under the title THE CHICAGO CONSPIRACY TRIAL in 1993 by Da Capo Press).

substance and style and took up the causes Darrow would certainly have espoused. We can still see Kunstler in a courtroom today, in the Spike Lee film *Malcolm X*, where Kunstler played the judge.

Over forty biographies of Thurgood Marshall have been published, many for children. Most of them focus on his career as a Justice of the United States Supreme Court, although there are excellent accounts of his work as Chief Counsel for the NAACP prior to his appointment to the bench.<sup>52</sup> That work included numerous death penalty cases at both the trial and appellate level. Marshall's exposure to the way the death penalty operated "in the trenches" was unique. No one else on the Supreme Court, and no one since, brought such experience to bear in the writing of Supreme Court opinions.

In one case, Marshall was trial counsel for an African-American man accused of raping a white woman. The prosecution offered a life sentence in exchange for a plea of guilty. Marshall conveyed the offer to his client, who exclaimed: "Plead guilty to what? Raping that woman? You gotta be kidding. I won't do it." Marshall later recounted, "That's when I knew I had an innocent man." Marshall told that story to his fellow justices, concluding, "The guy was found guilty and sentenced to death. But he never raped that woman." He paused, flicking his hand, and added, "Oh well, he was just a Negro."

In a tribute to Justice Marshall after his retirement, Justice Sandra Day O'Connor reflected that stories like these "would, by and by, perhaps change the way I see the world."<sup>53</sup> While we're still waiting for the "by and by," it is clear that Thurgood Marshall's experiences as a criminal defense lawyer strongly influenced his work as a Supreme Court Justice and at least entertained his fellow justices. The hundreds of opinions he authored as a Justice on the Supreme Court should be included in the legacy that keeps Thurgood Marshall accessible today.

Gerry Spence is immediately recognized by his buckskin fringe, and is well known to television audiences for commentary on pending cases. He is also a popular author, and his books recount a legal

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52. See, e.g., JUSTICES, *supra* note 14; KLUGER, *supra* note 16.

53. Sandra Day O'Connor, *Thurgood Marshall: The Influence of a Raconteur*, 44 STAN. L. REV. 1217, 1220 (1992).

career with strong parallels to Darrow's.<sup>54</sup> Clarence Darrow abandoned a career as a railroad lawyer to take up the cause of Eugene Debs and his railworkers' union. Spence was a lawyer once retained by insurance companies who became a feared nemesis of insurance companies. Equally confident in civil or criminal cases, Spence cultivates the image of the lone gunfighter. "Dream teams" are not his cup of tea. His writing is not confined to spinning stories about his cases, either. He offers practical advice on a wide variety of issues.<sup>55</sup>

Michael Tigar became a familiar figure during the trial of the Oklahoma City bombing case, where his spirited defense of Terry Nichols avoided a death penalty. His handling of the media was a textbook example of the lessons taught by Edward Bennett Williams, his mentor—not flashy, but solid and credible. Tigar argued the landmark case before the United States Supreme Court dealing with the limits the First Amendment permits on out-of-court advocacy by lawyers.<sup>56</sup> Tigar affects a folksy, cowboy boots style, but he is a brilliant scholar with a commanding grasp of history and political science.<sup>57</sup> His two books on trial skills for lawyers are filled with examples of brilliant advocacy from his own work, as well as that of Edward Bennett Williams.<sup>58</sup>

Edward Bennett Williams was very careful and selective about the cases he accepted. Had he chosen to do so, he could have easily surpassed Darrow in the number of trials of the century he took on. He also was guarded and circumspect in his public commentary. His only book, *One Man's Freedom*, is a classic description of the duty of a criminal defense attorney to take up the cause of the unpopular and despised, even at the personal cost of being identified with one's client.<sup>59</sup> Williams's clients included Senator Joseph McCarthy, racketeer Frank Costello, and Teamsters president Jimmy Hoffa. Since his death, two biographies of Edward Bennett Williams have

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54. See GERRY SPENCE, *THE MAKING OF A COUNTRY LAWYER* (1996); GERRY SPENCE & ANTHONY POLK, *GUNNING FOR JUSTICE* (1982).

55. See GERRY SPENCE, *HOW TO ARGUE AND WIN EVERY TIME* (1995); O.J.: *THE LAST WORD* (1997).

56. See *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991).

57. See MICHAEL TIGAR, *LAW AND THE RISE OF CAPITALISM* (1990).

58. See MICHAEL TIGAR, *EXAMINING WITNESSES* (1993); MICHAEL TIGAR, *PERSUASION: THE LITIGATOR'S ART* (1999).

59. See EDWARD BENNETT WILLIAMS, *ONE MAN'S FREEDOM* (1962).

appeared, both providing rich detail into the exacting preparation that preceded his appearances in court.<sup>60</sup>

The body of literature left by our contenders runs rich and deep. Lawyers and law students will find lots of ore worth mining in this lode. Having consumed most of it, I believe the most accessible lawyer among our contenders is still Clarence Darrow. Reading the transcripts of his trials still fills me with awe for the depth and breadth of his humanity as well as his ability to communicate it. No matter how many times I watch it, I still get goose bumps seeing Orson Welles speak the words of Clarence Darrow pleading for life in the Loeb and Leopold case.<sup>61</sup>

## VII. ADHERENCE TO ETHICAL STANDARDS

Few of our contenders survived their contentious careers as trial lawyers without accusations of unethical behavior. Darrow was not the only one who was indicted. Indeed, participation as a defense lawyer in any trial of the century is a risky venture. The defense lawyers rarely emerge with their reputations intact. Frequently, they end up as defendants themselves in subsequent proceedings. Before weighing this factor or making comparisons, it might be useful to briefly summarize the ethical challenges with which each of our contenders have been confronted.

During the penalty phase of the retrial of the Menendez brothers for the murder of their parents, defense psychiatrist Dr. William Vicary testified that Leslie Abramson had instructed him to alter his notes of conversations with Erik Menendez and threatened to take him off the case if he disobeyed. When inquiries were directed to Ms. Abramson by the court, she invoked the Fifth Amendment privilege against self-incrimination. This invocation of privilege was later withdrawn, and Ms. Abramson explained that Dr. Vicary was

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60. See ROBERT PACK, *EDWARD BENNETT WILLIAMS FOR THE DEFENSE* (1983); EVAN THOMAS, *THE MAN TO SEE: EDWARD BENNETT WILLIAMS, ULTIMATE INSIDER, LEGENDARY TRIAL LAWYER* (1991).

61. See *COMPULSION*, *supra* note 25. The script for *Compulsion* is remarkably faithful to Darrow's actual words, and the death penalty argument to the judge consumes a full twenty minutes of the film. Modern films targeting the short attention spans of today's audiences simply do not allow this kind of presentation.

instructed to "redact" his notes to protect material she believed was protected by attorney-client privilege.<sup>62</sup> An investigation was launched by the State Bar of California, which announced two years later that no grounds were found for any disciplinary action. Ms. Abramson attributed the accusations to exaggeration inspired by her celebrity:

"I'm Jewish, I'm feisty, I'm aggressive, I'm tough. I take no prisoners and I'm a defense lawyer. And I'm a girl, and girls aren't supposed to be any of the above. . . . If you're going to be a defense lawyer you can't intend to win popularity contests or go into politics. . . . People tend to associate us with the crimes of our clients, and they see us as standing in the way of convictions."<sup>63</sup>

F. Lee Bailey was indicted in 1973, along with former client Glenn W. Turner, for mail fraud. After sitting through a lengthy trial in federal court in Florida, he was granted a severance. The trial then ended with a mistrial as to the remaining defendants. The indictment was subsequently dismissed. Bailey attributes this indictment to vindictiveness resulting from his criticism of federal postal inspectors in the Plymouth Mail Robbery case.<sup>64</sup> In 1976, Bailey's credibility was challenged after a speech to a group of Los Angeles executives in which he recounted an alleged exchange with Thurgood Marshall when Marshall was Solicitor General in which Marshall referred to himself as "head nigger." Marshall denied the story, calling it "the most deliberate lie I ever heard."<sup>65</sup>

After the O.J. Simpson trial, Bailey found himself in hot water on two occasions in which the government claimed he had taken forfeited assets as legal fees. In the case of Claude Duboc, a drug trafficker who amassed a fortune in excess of \$100 million smuggling marijuana and hashish into Canada, Bailey claimed that the government allowed him to hold \$6 million in stock in a Canadian pharmaceutical firm in order to guarantee his fee. When the stock increased

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62. See *Lawyer Defends Herself Against Accusations*, TELEGRAPH HERALD (Dubuque, Iowa), Apr. 22, 1996, at A9.

63. *Id.*

64. See BAILEY, *supra* note 32, at 276.

65. Ben Bradlee Jr., *The Great Defender*, BOSTON GLOBE, Aug. 25, 1996, at Mag. 16 (quoting Barry Farrell, NEW W. MAG., May 10, 1976).

in value to \$27 million, Bailey claimed he was entitled to the profit since he assumed the risk of a loss. He was jailed for forty-three days for contempt of court when he failed to meet a deadline for returning the stock to the government from a Swiss holding account. Ultimately, he dropped his claim to the stock, saying he would seek recovery in a breach of contract suit in the Court of Claims.<sup>66</sup> Robert Shapiro, co-counsel in the O.J. Simpson trial, testified as a witness against Bailey in the fee forfeiture dispute. Three years later, another Florida judge threatened to hold Bailey in contempt for failure to turn over a \$2 million Cayman Islands trust fund established by another client to pay legal fees after it was ordered forfeited in a money-laundering case.<sup>67</sup>

Johnnie Cochran has never been the recipient of any professional discipline, although an official investigation was launched against him by the State Bar of California after the O.J. Simpson verdict. The sixteen-month investigation concluded with public reprimands of Carl Douglas for not having personally signed two witness subpoenas, and of Barry Scheck for not reactivating his California bar membership after entering the case.<sup>68</sup> Cochran was criticized for "playing the race card" in his closing argument, for allegedly rearranging pictures in Simpson's home prior to the jury visit, and for blasting Judge Ito's ruling on admissibility of the Fuhrman tapes at a mid-trial press conference. None of these incidents merited professional discipline, and all were defensible in the realm of vigorous advocacy.<sup>69</sup>

Both William Kunstler and Michael Tigar were subjected to the erratic injustice of Judge Julius Hoffman during the Chicago Seven conspiracy trial. Tigar entered an appearance in the case for the purpose of pretrial motions related to electronic surveillance. When a dispute over the availability of Charles Garry to represent Bobby Seale threatened to sidetrack the trial, Judge Hoffman issued

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66. *See id.*

67. *See* Jim Leusner, *Bailey Must Pay \$2 Million by May 3*, ORLANDO SENTINEL, Apr. 2, 1999, at D1.

68. *See Simpson Lawyer is Reprimanded and a Second May Be Censured*, N.Y. TIMES, June 14, 1997, § 1, at 6.

69. *See, e.g., Symposium, Responsibilities of the Criminal Defense Attorney*, 30 LOY. L.A. L. REV. 1 (1996).



warrants to arrest the lawyers who had entered appearances in the case but were not present at the commencement of the trial. Tigar had notified the court of his withdrawal by telegram earlier in the week. Nonetheless, he was taken into custody in Los Angeles and transported to Chicago to face a charge of contempt of court. Tigar was quickly released and permitted to withdraw as counsel.<sup>70</sup> Kunstler was convicted of twenty-four counts of contempt of court for various incidents occurring during the Chicago Seven trial.

These convictions were set aside on appeal, but several counts were remanded for retrial before a different judge.<sup>71</sup> On retrial, Kunstler was again convicted of two counts of contempt for outbursts over the court's refusal to allow him to call Dr. Ralph Abernathy as a witness. The outbursts were described as "diatribes" that served no purpose other than venting Kunstler's spleen. After the ruling, Kunstler insisted on calling Abernathy to the stand and embracing him in front of the jury. The convictions on these counts were affirmed on appeal, although no jail time or fine had been imposed.<sup>72</sup> William Kunstler was unrepentant, however, and regarded his performance in the Chicago Seven trial as his proudest moment and as a turning point in his life. In what he described as "one of the most impassioned orations of my life," these are the words he spoke when he was sentenced on his contempt charges:

I have tried with all my heart faithfully to represent my clients in the face of what I consider—and still consider—repressive and unjust conduct toward them. If I have to pay with my liberty for such representation, then that is the price of my beliefs and my sensibilities. . . . I have the utmost faith that my beloved brethren at the bar, young and old alike, will not allow themselves to be frightened out of defending the poor, the persecuted, the radicals and the militant, the black people, the pacifists, and the political pariahs of this, our common land. . . . I may not be the

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70. See *United States v. Seale*, 461 F.2d 345, 357 n.21 (7th Cir. 1972).

71. See *In re Dellinger*, 461 F.2d 389 (7th Cir. 1972).

72. See *United States v. Dellinger*, 502 F.2d 813 (7th Cir. 1974). The denial of a writ of *coram nobis* challenging these convictions after disclosure of documents demonstrating government misconduct was upheld in *United States v. Dellinger*, 657 F.2d 140, 146 (7th Cir. 1981).

greatest lawyer in the world . . . but I think that I am at this moment, along with Len Weinglass . . . the most privileged. We are being sentenced for what we believe in.<sup>73</sup>

Edward Bennett Williams was known as a Washington insider, a close friend to those in power through six presidential administrations. As a lawyer, however, he projected an image of spotless rectitude. That image was tarnished only once, during the trial of Jimmy Hoffa. Williams, just like Johnnie Cochran, was accused of "playing race cards." Ten of the jurors seated in the Hoffa case were black. During the trial, a young black female lawyer from Los Angeles, Martha Malone Jefferson, made a brief appearance in the courtroom, and posed for a picture with Williams and Hoffa. That same week, a leading black newspaper, the *Afro-American*, carried a large advertisement extolling Hoffa as a champion for the 167,000 black truck drivers who belonged to the Teamsters Union. The ad included a photo of Williams, Hoffa, and Jefferson, with a caption explaining that the "famous West Coast lawyer" had joined the defense team. The same issue also had a front-page story headlined "L.A. Woman Attorney in Hoffa Case." The newspaper was delivered to all ten of the black jurors on the case.

One week later, former heavyweight champion Joe Louis appeared in the courtroom. While he had been subpoenaed as a character witness, Williams never called him to the stand. Before Louis left, however, Hoffa embraced him in the presence of the jury. Williams denied any foreknowledge of either event, but his denial appears to be inconsistent with the absolute control over everything going on in the courtroom upon which Williams ordinarily insisted.<sup>74</sup> F. Lee Bailey credits Williams's denial, however, saying that Hoffa, whom he also represented, was notorious for thinking he was smarter than his lawyers and making "arrangements" behind his lawyers' backs.<sup>75</sup>

The careers of Alan Dershowitz, Gerry Spence, and Thurgood Marshall contain no blemishes of an ethical nature. While Dershowitz is frequently criticized for saying too much, he has never been

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73. KUNSTLER & ISENBERG, MY LIFE AS A RADICAL LAWYER, *supra* note 47, at 39.

74. See PACK, *supra* note 60, at 226-34.

75. Telephone Interview with F. Lee Bailey (Sept. 20, 1999).

cited for violating a gag order in any case in which he entered an appearance. While I have criticized Spence's performances as a television commentator,<sup>76</sup> I have nothing but admiration for his courtroom performances. Thurgood Marshall survived very intense scrutiny throughout two Senate inquiries during his judicial nominations. When he was nominated to be a judge of the U.S. Court of Appeals for the Second Circuit, he was subjected to severe hazing by southern senators on the Judiciary Committee, including Senators Olin Johnston of South Carolina, Sam J. Ervin, Jr. of North Carolina, James O. Eastland of Mississippi, and John L. McClellan of Arkansas. They dwelled on charges that the NAACP had stirred up litigation, used lay intermediaries, and engaged in the unauthorized practice of the law. None of these activities were directly linked to Marshall, and he was confirmed by a vote of fifty-four to eighteen. The disgusting performance of racist southern senators was repeated when Marshall was nominated to the Supreme Court, this time led by Senator Strom Thurmond of South Carolina. Marshall's Supreme Court nomination was confirmed by a vote of sixty-nine to eleven.<sup>77</sup>

This summary of the attacks upon the character of each of our contenders is a useful context in which to assess the questions that have been raised about the ethics of Clarence Darrow. It demonstrates that taking up the defense of unpopular defendants is indeed a hot kitchen in which to be employed. Nonetheless, the fact that one is subjected to unjustified attack might explain unethical conduct, but it cannot excuse it.

Nor is it any justification or excuse that "the other side" is just as unethical. If it were, Clarence Darrow would have had ample justification. In his marvelous account of the Haywood trial, J. Anthony Lukas provides some revealing glimpses of the ethical climate in which high-profile cases were tried in the early part of this century.<sup>78</sup> The line between private and public control of the prosecution was

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76. See UELMEN, *supra* note 9, at 94; Erwin Chemerinsky & Laurie Levenson, *The Ethics of Being a Commentator*, 69 S. CAL. L. REV. 1303 (1996); Erwin Chemerinsky & Laurie Levenson, *The Ethics of Being a Commentator II*, 37 SANTA CLARA L. REV. 913 (1997).

77. See JUSTICES, *supra* note 14, at 3077-88.

78. See LUKAS, *supra* note 22.

a blurry one, with private detectives on the payroll of large corporations playing a major role.<sup>79</sup> The confession of Harry Orchard, which was the keystone of the prosecution's case in the Haywood trial, was elicited in interrogation by Pinkerton Detective James McParland, who also engineered the abduction of the defendants from Colorado to Idaho to stand trial. Despite official denials, Lukas verifies that many of the costs of the prosecution were borne by mine owners, whose avowed goal was breaking the miner's union that Haywood headed. The "back dooring" of judges was also endemic. For example, to ensure that the state supreme court would not grant a writ of habeas corpus when he abducted the defendants, Detective McParland showed Harry Orchard's confession to one of the justices, revealing that the justice himself was an intended victim of a bomb. The justice nonetheless participated in rejecting the defendants' appeals.<sup>80</sup>

Many of these elements resurfaced in the McNamara case four years later. There, the City of Los Angeles hired Private Detective William J. Burns to illegally abduct the defendants and bring them to Los Angeles to face trial. The Merchants and Manufacturers Association retained Earl Rogers to assist in the grand jury investigation. If Clarence Darrow did conspire to bribe jurors, it was surely because he thought he was facing the same opponents he faced in Idaho, who would stoop to any measure to defeat him.

According to Professor Cowan's account, many of Darrow's contemporaries assumed he was guilty of the jury bribery charge because they assumed Darrow would fight fire with fire, and believed that the justice of his cause warranted any means, fair or foul, to prevail. That was not the defense Darrow presented at his trial, however. He argued that he was made a target of the prosecution after they arrested Bert Franklin, and the focus of the defense strategy was to challenge Franklin's credibility.

Even though that defense succeeded, Professor Cowan concludes not only that Darrow knew of the bribery attempts, but that

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79. In *People v. Eubanks*, 14 Cal. 4th 580, 927 P.2d 310, 59 Cal. Rptr. 2d 200 (1996), the California Supreme Court held that financial contributions to the costs of prosecution by a corporate victim of the theft of trade secrets created a conflict of interest that required disqualification of the district attorney.

80. See LUKAS, *supra* note 22.

his subsequent strategy in handling the McNamara defense was dictated by self-interest. After Franklin's arrest, Darrow quickly concluded a deal to plead the McNamara's guilt. Darrow's primary motivation for that deal, Cowan suggests, was to save his own skin, so he could argue he had no motive to engage in the bribery of jurors. For a defense lawyer, that would be a greater sin. It's one thing to commit a crime in a misguided attempt to save your clients, but to sell your clients down the river to save yourself is unforgivable. Cowan even alleges that "apparently Darrow made a secret effort to win a lighter sentence for himself by offering to testify against Samuel Gompers."<sup>81</sup> For a defense lawyer, that would be the greatest sin of all: to become a snitch for the prosecution. Cowan's documentation for that charge is highly suspect, however.<sup>82</sup>

Perhaps the harshest assessment of the moral character of Clarence Darrow was the poem by his former law partner, Edgar Lee Masters. It was written in 1916:

You can crawl  
Hungry and subtle over Eden's wall,  
And shame half grown up truth, or make a lie  
Full grown as good . . .  
A giant as we hoped, in truth a dwarf;  
A barrel of slop that shines on Lethe's wharf,  
Which seemed at first a vessel with sweet wine  
For thirsty lips. So down the swift decline  
You went through sloven spirit, craven heart  
And cynic indolence. And here the art  
Of molding clay has caught you for the nonce  
And made your head our shame—your head in bronze!  
One thing is sure, you will not long be dust  
When this bronze will be broken as a bust

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81. COWAN, *supra* note 3, at 298-99, 440.

82. Cowan cites the papers of Walter Drew, a director of the National Erectors' Association, engaged in an effort to mount a nationwide prosecution of labor union leaders for the dynamiting conspiracy. The alleged "plea bargain offer" was leaked to the press and published in the *L.A. Times*, most probably in a prosecution effort to weaken Darrow's defense. See *id.* at 299.

And given to the junkman to resell.

You know this and the thought of it is hell!<sup>83</sup>

Even Masters may have concluded that Darrow was capable of redemption, however. Six years later, he wrote another poem about Darrow, much more sympathetic:

This is a man with an old face, always old . . .

There was pathos, too, in his face, and in his eyes,

And early weariness; and sometimes tears in his eyes,

Which he let slip unconsciously on his cheek,

Or brushed away with an unconcerned hand.

There were tears for human suffering, for a glance

Into the vast futility of life,

Which he had seen from the first, being old

When he was born.

This is Darrow,

Inadequately scrawled, with his young, old heart,

And his drawl, and his infinite paradox

And his sadness, and kindness,

And his artist sense that drives him to shape his life

To something harmonious, even against the schemes of God.<sup>84</sup>

If all other factors were equal, and the lawyer of the century turned on the question of adherence to ethical standards, Clarence Darrow would not be the winner. The sense of professional propriety and ethical conscience displayed by Thurgood Marshall and Edward Bennett Williams outclasses Darrow. At the same time, Darrow's lapses cannot disqualify him. He picked himself up from the ashes of 1912 and spent the rest of his life pursuing justice in the midst of mobs that hissed and hated. He deserves to be a role model for the things he did after he left Los Angeles, and he was a more convincing advocate of forgiveness because he himself had fallen.

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83. EDGAR LEE MASTERS, *SONGS AND SATIRES* (1916).

84. Edgar Lee Masters, *Clarence Darrow*, *THE NEW REPUBLIC*, May 27, 1957, at 16.

If Darrow had slunk off the stage of history after the McNamara case, Professor Dershowitz's harsh assessment would be correct. But Darrow overcame a period of deep, dark depression to emerge a greater advocate than before. The ability to pick yourself up and forge ahead after a setback is an essential quality for a trial lawyer, and Darrow's life is an extraordinary example of human redemption. The need for redemption may have been what drove Darrow to his greatest conquests. As he reflected in his autobiography,

[w]hat we are is the result of all the past which molds and modifies the being. I know that the sad, hard experience made me kindlier and more understanding and less critical of all who live. I am sure that it gave me a point of view that nothing else could bring.<sup>85</sup>

There truly were two Clarence Darrows. The Clarence Darrow who should be offered to young lawyers as a role model is not the Clarence Darrow of 1912, who apparently succumbed to a momentary delusion that the end could justify the means. The Clarence Darrow who should be offered as a role model is the haggard, weary man who pleaded for the lives of Loeb and Leopold in 1924:

I am pleading for the future; I am pleading for a time when hatred and cruelty will not control the hearts of men, when we can learn by reason and judgment and understanding and faith that all life is worth saving, and that mercy is the highest attribute of man.<sup>86</sup>

#### VIII. THE CONTENDERS' CHOICES

As a final measure, I surveyed the surviving lawyers who are themselves contenders for the honor of lawyer of the century. Who, I asked, other than themselves, would they rank as the greatest lawyer of the century? There was little consensus among them, other than the fact that they all picked lawyers who are now dead.

Leslie Abramson would pick Earl Rogers as the lawyer of the century. Rogers fell off our list of contenders, largely because so few are still familiar with his exploits today. Abramson describes Rogers as a "real" trial lawyer, who fought in the courtrooms day in

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85. DARROW, *supra* note 36, at 207.

86. ATTORNEY FOR THE DAMNED, *supra* note 2, at 86-87.

and day out, dazzling juries with his persuasive powers. In Rogers's day, the evidentiary battleground was the admissibility of fingerprint evidence, not DNA. Rogers fought that battle with all the wit and intelligence today's lawyers can muster. As Leslie put it, "He was the Johnnie Cochran of his day, but smarter." She dismisses his legendary drinking problem by saying, "He could do better while drunk than most of us can do while sober."<sup>87</sup>

F. Lee Bailey's choice is Edward Bennett Williams. Soon after he passed the bar, Bailey sought an opportunity to meet Williams, and asked him how he managed to pull a rabbit out of a hat so consistently. Williams told him, "If you want to pull rabbits out of hats, you better have fifty hats and fifty rabbits, and get lucky." Bailey later represented a co-defendant while Williams was defending Otto Kerner, a U.S. Circuit Judge and former Governor of Illinois charged with accepting bribes. Thus, he observed Williams's legendary preparation and consummate trial skills first-hand. Bailey says that he has met or worked with every lawyer on our list of contenders with the exception of Clarence Darrow. He dismisses Darrow as a "polemicist" who shamed himself with his exploits in Los Angeles. Based upon his personal observations, Edward Bennett Williams is his "clear choice."<sup>88</sup>

Johnnie Cochran did not hesitate for a second. His personal hero, and choice as lawyer of the century is Thurgood Marshall. Marshall's work left a legacy that few lawyers can claim, he said. He combined great academic skills with great courtroom skills. Cochran met Marshall on the day Cochran was admitted to the bar of the Supreme Court, in 1968. What impressed him most about Marshall was that "the man never forgot where he came from."<sup>89</sup>

Alan Dershowitz also picked Edward Bennett Williams as the lawyer of the century. He also placed F. Lee Bailey and Clarence Darrow near the top of his list, making it clear that only Darrow's ethical lapses would deny him the top spot. Dershowitz concluded Williams fits his "Man for All Seasons" mold because of his intelligence, tactical brilliance, and the impact of his work. When asked

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87. Telephone Interview with Leslie Abramson (Aug. 12, 1999).

88. Telephone Interview with F. Lee Bailey (Sept. 20, 1999).

89. Telephone Interview with Johnnie Cochran (Sept. 20, 1999).



whom he would call if he were indicted, however, Dershowitz said his choice to represent him would be Michael Tigar.<sup>90</sup>

Gerry Spence's pick for lawyer of the century is Clarence Darrow. Spence says Darrow has always been a "light" for his life. He found so great a parallel between Darrow's words and his own thoughts that he actually checked when Darrow died to see if he might have been a reincarnation of Darrow's soul! (He found he was born before Darrow's death.) While Spence does not believe in reincarnation, he certainly believes in heroes, and Darrow is his role model. He points to Darrow's passion for justice for the underdog and championing the causes of the common people as virtues for today's lawyers to emulate. He dismisses the claim that Darrow bribed jurors as unfair, since Darrow can no longer defend himself, and was acquitted when he could. He also suggests that even if Darrow was guilty, his conduct must be viewed in the context of the class warfare that prevailed at the time, in which the crimes of the ruling class far outweighed anything Darrow might have done.<sup>91</sup>

Michael Tigar would also pick Clarence Darrow as the lawyer of the century. "No lawyer so effectively spoke to the social and historical context in which legal controversies are decided as did Darrow," he says. For him, Darrow stands in the middle of history, choosing to represent clients whose causes defined the most significant issues of the twentieth century. Tigar attributes the earliest ambitions that defined the kind of lawyer he wanted to be to reading about Darrow:

I recall telling my father, when I was about eleven, that I was thinking of becoming a lawyer. He thought for a time, then went back to his room and came back with a copy of Irving Stone's *Clarence Darrow for the Defense*. "This," he said, "is the kind of lawyer you should be." Through high school and college I devoured books on Darrow: his autobiography, the Weinberg collection of trial excerpts, *Attorney for the Damned*, the fictionalized *Inherit the Wind*.<sup>92</sup>

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90. Telephone Interview with Alan Dershowitz (Sept. 17, 1999).

91. Telephone Interview with Gerry Spence (Sept. 29, 1999).

92. TIGAR, PERSUASION: THE LITIGATOR'S ART, *supra* note 58, at xv.

Tigar firmly believes that a lawyer is ultimately defined by the clients he or she chooses to represent. Even the most unpopular client can present an opportunity to advance the cause of justice. In defending Terry Nichols, Tigar re-read many of Darrow's great arguments to find inspiration. With regard to the charge of jury-bribing, Tigar reflects that many great lawyers were accused of unduly influencing juries, but Darrow is the only one "with a certificate saying he is not guilty." "If we believe in our system of justice," he concludes, "we have to assume Darrow was innocent."<sup>93</sup>

The selections of those who are themselves contenders for the honor of lawyer of the century should weigh heavily in our assessment of the criterion of professional reputation, with which I began this Essay. From the contenders' perspectives, Edward Bennett Williams may have an equal claim with that of Clarence Darrow. Yet none of our contenders was closer to Edward Bennett Williams than Michael Tigar. His selection of Darrow is based upon the causes Darrow served, and the issues he litigated. Williams and Darrow represent two very different images of the American lawyer. Williams was ultimately the Washington insider, who carefully picked clients who would enhance that image. Darrow, however, had no qualms about being perceived as a radical who was ready to challenge conventional wisdom, and he picked clients whose causes challenged the prevailing hypocrisy. Williams had great impact upon the law, especially in areas of privacy rights and wiretapping. But Darrow's causes spoke to a broader audience. He did, indeed, "plead for the future."<sup>94</sup>

#### IX. CONCLUSION

There are few lawyers alive in America today who personally knew Clarence Darrow. The only lawyer known to me who was personally acquainted with Darrow is Quentin Ogren, Professor Emeritus of Loyola Law School in Los Angeles. Professor Ogren met Clarence Darrow as a teenager in a small Illinois town, when Darrow assisted in the successful defense of a fellow townsman sentenced to death. Professor Ogren's reflection on his meeting with Darrow is

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93. Telephone Interview with Michael Tigar (Sept. 13, 1999).

94. ATTORNEY FOR THE DAMNED, *supra* note 2, at 85-87.

attached to this Essay as Appendix II with his permission. But thousands more American lawyers, who never met Darrow, have read about his work in famous cases and been inspired by Darrow's arguments and written works. Admiration for Clarence Darrow, and familiarity with his work, is common to many of today's leading practitioners. Morris Dees, the heroic civil rights lawyer from Alabama, attributes an actual "conversion" experience from reading Darrow's autobiography while snowed in at an airport in Cincinnati:

I stopped at the airport's snack bar, picked up a hot dog and Coke, and then browsed the newstand. One book, *The Story of My Life* by Clarence Darrow, caught my eye. . . . I bought the paperback, a reprint of the 1934 original, and found a seat to eat my supper. Before daylight I finished Darrow's story of his life. It changed mine forever. I was reading my own thoughts and feelings. . . . On the flight to Chicago the next morning, I thought a lot about Clarence Darrow. . . . I had made up my mind. I would sell the company as soon as possible and specialize in civil rights law.<sup>95</sup>

Arthur Liman, a power litigator who died in 1997 after a spectacular career with the esteemed law firm of Paul, Weiss, Rifkind, Wharton & Garrison, wrote in his memoirs:

My image of the trial lawyer remained Clarence Darrow, who had sided with the working man, with minorities and radicals, and who had fought for due process and a fair trial and against bigotry, ignorance, and hate. But Darrow was larger than life, a man of impassioned eloquence whose power I could never imagine equaling.<sup>96</sup>

The criteria of professional reputation, participation in trials of the century, public recognition, and accessibility of information all point to Clarence Darrow as the lawyer of the century. Only in assessing the criterion of adherence to ethical standards do blemishes appear in Darrow's record. It appears that American lawyers are willing to

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95. MORRIS DEES, A SEASON FOR JUSTICE 95-97 (1991).

96. ARTHUR LIMAN, LAWYER: A LIFE OF COUNSEL AND CONTROVERSY 22 (1998).

overlook those blemishes, and still look to Darrow as their role model.

The runners-up are Thurgood Marshall and Edward Bennett Williams. Both have achieved heroic dimensions comparable to Darrow, and both have become role models for thousands of other lawyers. Both have impeccable records when it comes to adherence to ethical standards. While Marshall lacked the consummate trial skills of Williams, his legacy looms as large as any American lawyer of the twentieth century. Williams was a better-prepared lawyer than Clarence Darrow ever was, but the clients he served never measured up to the causes espoused by Darrow. Darrow put his skills to greater use.

This exercise of selecting a lawyer of the century will certainly not end the debate over who was the greatest lawyer of the past century. Hopefully, lawyers will continue to press the claims of their personal heroes, and robustly argue the relative merits of other contenders. There really needs to be a "Lawyer's Hall of Fame," like the baseball Hall of Fame in Cooperstown, New York, where the achievements of great American lawyers can be enshrined. The legal profession has produced a remarkable panoply of heroic lawyers, and the turn of this century should mark the moment we recognize that fact in a tangible way.

## APPENDIX I

### THE TRIALS OF THE CENTURY

YEAR	CASE	LOCATION	OUTCOME
1901	Leon Czolgosz: McKinley assassination	Buffalo, New York	Convicted & Executed
1904	Harry Thaw: Stanford White murder	New York, New York	1. Hung 2. Acquitted
1907	Bill Haywood: Murder conspiracy	Boise, Idaho	Acquitted
1908	Abe Ruef: San Francisco graft trials	San Francisco, California	Convicted
1911	McNamara Bros.: L.A. Times bombing Clarence Darrow: Jury Bribery	Los Angeles, California	Convicted (Guilty Plea) 1. Acquitted 2. Hung
1918	Eugene Debs: WWI Sedition	Chicago, Illinois	Convicted (Pardoned)
1921	Sacco & Vanzetti: Robbery murder	Dedham, Massachusetts	Convicted & Executed
1921	Fatty Arbuckle: Rape and Murder	San Francisco, California	1. Hung 2. Hung 3. Acquitted
1924	Loeb & Leopold: Bobby Franks murder	Chicago, Illinois	Convicted (Guilty Plea)
1925	Thomas Scopes: Teaching Evolution	Dayton, Tennessee	Convicted (Reversed)
1927	Albert Fall & Edward Doheny: Teapot Dome Oil Scandal	Washington, D.C.	1. Acquitted (conspiracy) 2. Doheny Acquitted (bribery) 3. Fall Convicted (bribery)

YEAR	CASE	LOCATION	OUTCOME
1931	Scottsboro Boys: Rape	Scottsboro, Alabama	Convicted (Reversed)
1931	Al Capone: Tax evasion	Chicago, Illinois	Convicted
1935	Bruno Hauptman: Lindbergh murder	Flemington, New Jersey	Convicted & Executed
1936	Lucky Luciano: Prostitution Conspiracy	New York, New York	Convicted
1944	Charlie Chaplin: Paternity	Los Angeles, California	Convicted
1946	Nuremberg War Trials	Nuremberg, Germany	Convicted & Executed
1949	Alger Hiss: Perjury	New York, New York	1.Hung 2.Convicted
1950	Harry Bridges: False Citizenship Application Vincent Hallinan & James MacInnis: Contempt	San Francisco, California	Convicted (Reversed) Convicted
1951	Julius & Ethel Rosen- berg: Espionage	New York, New York	Convicted & Executed
1957	Jimmy Hoffa: Bribery	Washington, D.C.	Acquitted
1959	Apalachia Organized Crime Conspiracy	New York, New York	Convicted (Reversed)
1964	Jack Ruby: Lee Harvey Oswald murder	Dallas, Texas	Convicted (Reversed)
1969	Sirhan Sirhan: Robert Kennedy assassination	Los Angeles, California	Convicted
1970	Chicago Seven: Conspiracy	Chicago, Illinois	Convicted (Reversed)
1971	Charles Manson: Tate & LaBianca murders	Los Angeles, California	Convicted
1972	Daniel Ellsberg: Pentagon Papers	Los Angeles, California	Dismissed

YEAR	CASE	LOCATION	OUTCOME
1973	Watergate Conspiracy	Washington, D.C.	Convicted
1976	Patty Hearst: Robbery	San Francisco, California	Convicted (Pardoned)
1978	Dan White: Moscone & Milk murders	San Francisco, California	Convicted
1981	John Hinckley, Jr.: Reagan Assassination Attempt	Washington, D.C.	Acquitted
1984	John DeLorean: Drug Conspiracy	Los Angeles, California	Acquitted
1986	Bernhard Goetz: Subway Shootings	New York, New York	Acquitted
1993	Menendez Brothers: Patricide	Los Angeles, California	1.Hung 2.Convicted
1997	McVeigh & Nichols: Oklahoma City bombing	Denver, Colorado	Convicted
1995	O.J. Simpson: Murder	Los Angeles, California	Acquitted
1999	President Bill Clinton: Impeachment	Washington, D.C.	Acquitted

## APPENDIX II

### An Encounter with Clarence Darrow<sup>†</sup>

by Professor Quentin "Bud" Ogren

The idol of my high school days in the Depression-ridden early '30s was Clarence Darrow, America's most hated and most loved trial lawyer. By 1933 Darrow had fought most of the famous battles of his career, and he came to Rockford, Ill., out of retirement at the urging of my father's friend, Fay Lewis, to defend Russell McWilliams, age 16, charged with first-degree murder of a street-car conductor in an armed robbery. The State's Attorney demanded the electric chair.

Throughout the lengthy trial, the issue among Rockford's good citizens wasn't so much McWilliams as Darrow. Though George Gallup was yet to invent his poll, a conservative estimate would be that 98 percent were against him and 2 percent for. If there were any undecideds, I never encountered them. My father, long an opponent of the death penalty, was a vocal part of the tiny, unpopular minority.

One day as the trial was drawing to a close, I happened to be in the vice principal's small office when Chester Bailey, the commercial law teacher, dropped in. Pointing to a headline on the front page of the morning paper, he exclaimed, "Look at that! Why, that Darrow ought to be run out of town on a rail!" Since the vice principal was part of the 98 percent, there was no argument, just conversation. I knew my place, which was off to the side, and I bit my lip.

The talk got hotter, and finally the teacher said, "If Darrow gets his way and McWilliams is let out, it won't be safe to walk the streets of Rockford." My lip was raw; I could bite no more, and I exploded: "I'd rather be seen on the streets of Rockford with Russell McWilliams than with some of the teachers I know." Within minutes I was expelled from school.

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<sup>†</sup> Professor Ogren's description of his encounter with Clarence Darrow originally appeared in the *San Luis Obispo Telegram & Tribune*. See Dan Krieger, *Times Past: Encounter with Clarence Darrow Leaves Its Mark*, SAN LUIS OBISPO TELEGRAM & TRIB., June 5, 1999.



It was in the last half of my senior year. I was proud to have spoken out for justice, and I knew my father would be pleased. But I was hardly a wise son, for I didn't know my own father. Where would I be if I didn't graduate from high school? No diploma, no college, even if we could somehow scrape up the money. After a couple of days' reflection, I ate humble pie and was reinstated.

Then an exciting thing happened. Fay Lewis invited Dad and me to dine with him and Darrow. I was strongly impressed with Darrow's relaxed and easy manner, his friendliness, his humor, and his utter lack of bitterness toward his countless detractors. "I never wished any man dead," he told us, adding with a characteristic twinkle, "but I confess that I have read a few obituaries with considerable satisfaction."

Darrow lost the case, both the trial and the appeal. The boy was sentenced to die in the electric chair at the Joliet penitentiary. The day before the scheduled execution there was to be a hearing before the state Board of Pardons and Paroles, which had authority to recommend commutation to the governor, and the expectation was that the governor would follow the recommendation, whatever it might be.

Early on the day of the hearing, Fay Lewis, Dad and I drove to Joliet to be with Darrow at the hearing, to be held at the prison. Before the hearing we went with Darrow to see the warden, who told us candidly that he hoped for a commutation, because he was certain the execution would set off a riot, so intensely did the inmates identify with the boy, by now only 17.

The 10 men on the Board took their seats facing us at a highly polished table. The State's Attorney, B.J. Knight, displayed the murder gun and the conductor's bloodied shirt. He talked loud and persuasively about what a cold-blooded, premeditated killing it had been, what a fair trial the defendant had had, and their solemn duty to fulfill the command of the law, which was death. After two histrionic hours, he sat down.

It was Darrow's turn, and he began by asking permission to address the board sitting down, which was readily granted. In no time the contrast in style was absolute. No flamboyance here, just man-to-man, come-let-us reason-together conversation, delivered in such a soft voice that some had to lean close to hear. Nothing sensational,

nothing even novel, either. Merely a suggestion that they put themselves in the shoes of the young lad, penniless, his mother dead, his father long without work, living in a shanty out at the edge of town, utterly without hope of earning a few dimes so he could take his girl out for a good time, never in trouble before, like the street-car conductor a victim of evil social forces and frustrations that deny life and breed crime and death. The boy hadn't intended to fire the gun, but the conductor, surprised, reacted in a nervous, menacing way; the boy panicked, and the gun went off. After 15 or 20 minutes Darrow said he was getting tired, and the chairman granted a short recess.

I had been sitting in the front row, and as he started up the aisle Darrow beckoned to me to join him. When we reached his destination, the water cooler, he said to me, "Bud, did you see their eyes?" "No," I said, "I was watching you." Ignoring my response, he said, "If Russell McWilliams dies tomorrow, I'm going to sue 10 men for breach of promise."

The hearing resumed. Darrow talked in the same low-key manner for less than five minutes, and it was over.

After the hearing we returned to the warden's office, where Darrow arranged to have one of the guards escort me to death row. Why me? I didn't ask, and to this day I don't know the answer.

McWilliams' cell was tiny, with barely enough room for his cot, a toilet and wash-bowl, and a small table.

McWilliams, a Caucasian, was so pale, he was literally the whitest person I have ever seen. His pink eyelids confirmed what he told me, how for three nights he had not slept, he had just prayed and read his Bible. I told him then what Darrow had said at the water-cooler, and he needed no interpretation.

"Thank God," he said, "Now I can sleep."

We compared our ages, and I was only a few days older than he. Late that afternoon the governor, following the board's recommendation, commuted the sentence to life.

In 1951 I was practicing law in California, and my parents sent me a clipping from the Rockford Morning Star: Russell McWilliams, a model prisoner for 18 years and a trustee on the landscaping crew, was released on parole to take a job as a gardener in Vermont.

